into this country. Perhaps Professor Swain assumes too readily the soundness of the contention of federal administrative officers with respect to water on the public domain in states where riparian rights do not exist under the local law. See Mr. Bannister's article, "The Question of Federal Disposition of State Waters in the Priority States," 28 HARV. L. REV. 270. But he is undoubtedly in accord with eminent legal authority in conceding this claim, and it is not material to his argument which view is taken. In any event, the attempt to use local resources in undeveloped parts of the country as a means of raising general revenue, operates, as Professor Swain points out, simply to perpetuate a system of waste and is like nothing so much as the insistence of Great Britain prior to the American Revolution upon exercise of its technical legal authority to raise general revenue out of the colonies. After all there is a great deal in a name. If a policy of waste is labelled conservation, the label may endow it with a long life in the face of common sense and in spite of all that we should have learned from attempts of the federal government to make a profit at the expense of the locality out of the public domain in the territories prior to the Civil War.

The matter is one of politics rather than of law, but it cannot be insisted upon too strongly that those who frame our legislation should understand the legal as well as the economic theory upon which they are proceeding, and those who are called upon to draft legislation in this connection will do well to read and ponder what Professor Swain has to say. R. P.

THE VALIDITY OF RATE REGULATIONS. By Robert P. Reeder. Philadelphia: T. & J. W. Johnson. 1914. pp. 440.

This is the kind of a book that makes a reviewer's task ungrateful. For an ungrateful task it is to be compelled to say that a great deal of effort, wide reading and considerable intellectual freedom from phrases, have, after all, been unproductive. Few subjects are more important, and surely none more interesting, than a consideration of "the principles of Constitutional Law, which are involved in rate regulation." From a book of four hundred pages, which aims at more than a digest's aloofness from contested issues, one cannot demand less than that it should help somewhat toward the solution of knotty problems — at least to the extent of a penetrating analysis of the issues. What is to be said then of a book on the Validity of Rate Regulation that leaves practically untouched, except for a conventional statement of the cases, the whole problem of compelling unremunerative services or the carriage of specific commodities at unremunerative rates? (See *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585; *Norfolk & Western Ry. Co.* v. *Conley*, 236 U. S. 605; 28 HARV. L. REV. 683.)

Instead of grappling with problems such as these, which are peculiarly within the jurisdiction of the author's subject, the bulk of the book — some hundred pages — is devoted to an attempt to demonstrate that the Supreme Court is wrong in extending the "due process" clauses to substantial rights instead of confining them to the safeguarding of orderly procedure. This is shooting at a target which is tempting to all constitutional marksmen, — but what 's the use? Holmes and Thayer and Pound and Corwin and Shattuck and the rest have again and again smoked out the enemy, or confined his operations, but he is as alive as von Hindenburg after a defeat. One does not detect even new kinds of weapon in the attack. Particularly immaterial to the main subject of the book is this predominant detour, inasmuch as, so far as questions affecting the validity of rate regulations go, Mr. Reeder, after disposing of questions by throwing "due process" out of the window, lets them walk in again

through the door "of the equal protection of the laws." There cannot be too much insistence on definite meanings for specific clauses of the Constitution, for there is all too much of loose lumping of different provisions, resulting in the creation of an atmosphere of unconstitutionality, in passing on specific measures. To that extent Mr. Reeder's analysis is welcome. But when all is said, the book leaves one with the feeling that here is the uncompressed material for a preface of a treatise on the validity of rate regulations.

F. F.

LIMITATIONS ON THE TREATY-MAKING POWER UNDER THE CONSTITUTION OF THE UNITED STATES. By Henry St. George Tucker, LL.D. Boston: Little, Brown, and Company. 1915. pp. xxi, 444.

In these days, when there is a strong tendency to extend the treaty-making power of the United States, such a book as this is timely. The object of the book is to discuss and to endeavor to define the limitations of the treaty-making power. In the early chapters the views of "the fathers of the Constitution" are shown; and it is evident that the present extensions of the treaty-making power were not anticipated. Those entrusted with the treaty-making power since the middle of the nineteenth century are shown to have realized that certain of their acts probably were encroachments upon the rights of other branches of the government, yet to have justified these acts on the ground of high national policy. Against this tendency the opinions of many writers of high authority are stated; and to these are added the support of certain opinions of the Supreme Court.

The varied practice in treaty-making in the days of the Confederation was succeeded by an attempt to define the field of this power through the Constitution. If the clauses of the Constitution relating to treaty-making stood alone and were not part of the larger instrument and thereby limited, the contention of some of those who have from time to time been of the treaty-making bodies could more easily be maintained.

The lack of uniformity in opinions of presidents and secretaries of state as to the limitations of their treaty-making functions offer striking contrasts. Some of these are shown in the chapter devoted to the report of J. Randolph Tucker in 1887 upon the constitutionality of the Hawaiian treaty. In the discussion relating to the principles involved in the Japanese-California controversies, the opinion of the author is in many respects contrary to that of Professor Willoughby and to that of Mr. Root.

The position of Mr. Butler in his book, "Treaty-Making Power under the Constitution," to the effect that the treaty-making power is vested in the central government and "is also possessed by that government as an attribute of sovereignty," is also one entirely opposed to the general thesis of this book. It would likewise seem that Mr. Tucker would consider many recent international agreements which have been negotiated by the United States as without constitutional sanction.

Detailed attention is given to *Chirac* v. *Chirac*, *Hauenstein* v. *Lynham*, *Geofroy* v. *Riggs*, in connection with rights of aliens in relation to rights of states. The author does not consider certain common deductions from the case of *Ware* v. *Hylton* as justifiable.

Mr. Tucker does not claim to be making a profound contribution to the literature upon the Constitution of the United States, but a simple statement, which is written in easy style, of the power of the United States to make treaties. His conclusions would support a much more strict limitation upon the treaty-making power than has been observed in recent years.

G. G. W.